

STATE FIRE MARSHAL MODIFICATIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Fire Prevention and Safety Act in the Public Safety Code to regulate the manufacture, storage, sale, and distribution of novelty lighters that have a shape resembling or imitating a toy or object other than a lighter.

Highlighted Provisions:

This bill:

- ▶ authorizes the Utah Fire Prevention Board to adopt administrative rules to:
 - identify lighters or classes or types of lighters that are commonly referred to as novelty lighters; and
 - provide for review of a decision of the State Fire Marshal Division regarding these lighters;
- ▶ requires the state fire marshal to maintain and make available to the public a list of novelty lighters;
- ▶ prohibits the sale, manufacture, distribution, or possession of novelty lighters for the purpose of selling or distributing the novelty lighters within the state;
- ▶ authorizes the state fire marshal, a representative of the state fire marshal, a local fire enforcement official, and a law enforcement agency to seize and destroy certain novelty lighters;
- ▶ provides civil penalties and authorizes the state fire marshal to assess a civil penalty on a manufacturer, importer, wholesaler, seller, or distributor of the novelty lighters;



59 pertinent to the flame-producing function of the lighter.

60 (2) "Distribute" means to:

61 (a) deliver to a person other than the purchaser; or

62 (b) provide as part of a commercial promotion or as a prize or premium.

63 (3) "Importer" means a person who causes a lighter to enter this state from a
64 manufacturing, wholesale, distribution, or retail sales point outside this state:

65 (a) for the purpose of selling or distributing the lighter within this state; or

66 (b) with the result that the lighter is sold or distributed within this state.

67 (4) "Lighter" means a handheld mechanical device of a type typically used for igniting
68 tobacco products by use of a flame.

69 (5) "Misleading design" means a lighter that:

70 (a) has a shape that resembles or imitates an object other than a lighter;

71 (b) may have one or more audio or visual effects; and

72 (c) has other features of a type that would reasonably be expected to make the lighter
73 appealing or attractive to a child younger than 10 years of age.

74 (6) "Novelty lighter":

75 (a) means a lighter that has:

76 (i) a misleading design; and

77 (ii) operates on any fuel, including butane or liquid fuel;

78 (b) does not mean:

79 (i) a lighter manufactured before January 1, 1980;

80 (ii) a lighter that has been rendered permanently incapable of producing a flame or
81 otherwise causing combustion; or

82 (iii) a mechanical device primarily used to ignite fuel for fireplaces, or for charcoal or
83 gas grills.

84 (7) "Sell" means to provide or promise to provide a product to a wholesale, retail,
85 mail-order, or other purchaser in exchange for consideration.

86 (8) "Visual effect":

87 (a) includes flashing lights, color-changing lights, or changing images; and

88 (b) does not include logos, decals, decorative artwork, or heat-shrinkable sleeves.

89 Section 3. Section **53-7-503** is enacted to read:

90 **53-7-503. Rulemaking authority -- Publicly accessible list of contraband lighters**
91 **maintained by the state fire marshal -- Authority to seize and destroy novelty lighters.**

92 (1) The Utah Fire Prevention Board, created in Section 53-7-203, may adopt rules in
93 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

94 (a) identify lighters or classes or types of lighters that are novelty lighters; and

95 (b) provide for an informal adjudicative hearing, as provided in Section 63G-4-203, by
96 the board to hear appeals of decisions of the State Fire Marshal Division under this part.

97 (2) (a) The state fire marshal shall establish and maintain a list of lighters, or classes
98 and types of lighters, that the state fire marshal has determined to be novelty lighters under this
99 part.

100 (b) The state fire marshal shall make the list available to the public in electronic form
101 or in other forms selected by the state fire marshal.

102 (3) A lighter is a contraband item subject to seizure and destruction by the state fire
103 marshal, a representative of the state fire marshal, a local fire enforcement official, or by a law
104 enforcement agency, if the lighter is:

105 (a) listed, or of a class or type listed, by the state fire marshal as a novelty lighter; and

106 (b) (i) offered for sale, sold, or distributed in this state; or

107 (ii) manufactured or possessed in this state for the purpose of sale or distribution in this
108 state.

109 (4) (a) The state fire marshal, a representative of the state fire marshal, a local fire
110 enforcement official, or a law enforcement agency may seize a novelty lighter that is not
111 described in Subsection (3).

112 (b) Upon finding that the person from whom the novelty lighter was seized is subject to
113 a civil penalty under Section 53-7-504 for being a manufacturer, importer, wholesaler, storer,
114 seller, or distributor of the novelty lighter, the state fire marshal or a representative may order
115 that the novelty lighter be forfeited and destroyed.

116 Section 4. Section **53-7-504** is enacted to read:

117 **53-7-504. Offenses -- Civil penalties -- Penalty monies to be deposited in the Fire**
118 **Academy Support Fund.**

119 (1) (a) A person may not sell, offer for sale, or distribute a novelty lighter in this state.

120 (b) A person may not manufacture a novelty lighter in this state, or import a novelty

121 lighter into this state, for the purpose of selling or distributing the novelty lighter within this
122 state.

123 (c) A person may not possess a novelty lighter in inventory for the purpose of selling or
124 distributing the novelty lighter within this state.

125 (2) (a) The state fire marshal may assess a civil penalty against a person who violates
126 Subsection (1) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

127 (b) The civil penalty for a violation of Subsection (1) may not exceed:

128 (i) \$10,000 for the manufacture or importation of novelty lighters;

129 (ii) \$1,000 if the person acts as a wholesaler of novelty lighters or distributes novelty
130 lighters by means other than distribution directly to consumers; and

131 (iii) \$500 if the person is:

132 (A) a retail seller of novelty lighters; or

133 (B) a person distributing novelty lighters, other than as a manufacturer, importer, or
134 wholesaler.

135 (3) If a person continues to violate this section after the state fire marshal gives the
136 person written notice of a violation, each day that the violation continues after written notice is
137 given is a separate offense subject to a civil penalty.

138 (4) (a) For purposes of imposing civil penalties, it is prima facie evidence that a lighter
139 is a novelty lighter if the lighter is listed by the state fire marshal as a novelty lighter under
140 Section 53-7-503, or is of a class or type of lighter listed by the state fire marshal as a novelty
141 lighter.

142 (b) Listing by the state fire marshal is not a requirement for a determination that a
143 lighter is a novelty lighter.

144 (5) All moneys collected from civil penalties under this section shall be deposited in
145 the Fire Academy Support Account created in Section 53-7-204.2.

146 (6) A person may seek judicial review of a final agency action under this part as
147 provided in Title 63G, Chapter 4, Administrative Procedures Act.

148 Section 5. Section **53-7-505** is enacted to read:

149 **53-7-505. Authority to have reasonable access to inspect facilities and records.**

150 (1) The state fire marshal, a representative of the state fire marshal, or a local fire
151 enforcement official may conduct inspections to ensure compliance with Section 53-7-504.

152 The state fire marshal, a representative of the state fire marshal, or a local fire enforcement
153 official may, regarding facilities within this state used in the business of manufacturing,
154 importing, distributing, selling, or storing of lighters:

- 155 (a) have access during reasonable business hours;
- 156 (b) inspect the facilities and any lighters located at the facilities; and
- 157 (c) inspect all business records pertaining to lighter manufacture, import, distribution,
158 sale, or storage.

159 (2) A person engaged in this state in the business of manufacturing, importing,
160 distributing, selling, or storing lighters shall grant the state fire marshal, a representative of the
161 state fire marshal, or a local fire enforcement official reasonable access for conducting
162 inspections under Subsection (1).

163 Section 6. Section **53-7-506** is enacted to read:

164 **53-7-506. Attorney general may bring action at request of the state fire marshal.**

165 (1) The state attorney general may bring an action at the request of the state fire
166 marshal, in the name of the state, seeking:

- 167 (a) injunctive relief to prevent or end a violation of Section 53-7-504 or 53-7-505;
- 168 (b) to recover civil penalties imposed under Section 53-7-504;
- 169 (c) to obtain access for inspections under Section 53-7-505; or
- 170 (d) to recover attorney fees and other enforcement costs.

171 Section 7. **Effective date.**

172 This bill takes effect on July 1, 2010.

Legislative Review Note
as of **9-15-09 3:25 PM**

Office of Legislative Research and General Counsel

H.B. 201 - State Fire Marshal Modifications

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Businesses selling novelty lighters may be impacted.
